IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Regular Second Appeal No. 2088 of 2004

Date of decision: August 11, 2006

Ranjit Singh and others

--- Appellants

Versus

Smt. Gurdev Kaur and others

--- Respondents

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

PRESENT: Mr. P.S. Kang, Advocate for the appellants.

Ms. Jaspal Kaur Gurna, Advocate for respondent No.1.

JUDGMENT

This order shall dispose of three appeals i.e. Regular Second Appeal Nos. 2088, 2089 and 2090 of 2004 as these arise out of a common judgment and decree passed by the first appellate court.

Briefly, the facts of the case are that the plaintiffs – Karnail Singh and another filed a suit for declaration that they were owners in possession in equal shares of land measuring 50 Kanals 14½ Marlas situated at village Mohanpur, Tehsil Khanna on the basis of registered will Exhibit P-2 dated 5.6.1973. The plaintiffs further sought the relief of permanent injunction restraining defendant Nos. 1 to 5 from alienating and dispossessing them from the suit property. Earlier deceased Prem Singh was the owner in possession of the land in dispute who was married to Smt. Gurdev Kaur. Prem Singh had no issue from this wedlock. Plaintiffs claimed that they were the sons of the brother of Smt. Gurdev Kaur who were brought up at village Mohanpur and even their marriages were also performed at the said village. Out of love and affection, Prem Singh executed a valid registered will dated 5.6.1973 in favour of the plaintiffs. The plaintiffs further alleged that defendant Nos. 1 to 5 were not related to Prem Singh and they in collusion with the witnesses and the scribe got manufactured a false and fictitious will dated 15.1.1987, Exhibit P-5. It was alleged that the defendants No. 1 to 5 have been threatening to alienate and dispossess the plaintiffs from the suit land forcibly and illegally. Hence, the suit was filed.

Suit was contested by the defendants by filing two separate written statements, one by defendant Nos. 1 to 5 and another by the wife and the mother of the deceased Prem Singh viz. Smt. Gurdev Kaur and Smt. Jaswant Kaur (defendants No. 6 and 7) whereby they denied and controverted the averments made by the plaintiffs. On the pleadings of the parties, the following issues were framed:

1- Whether the deceased Prem Singh executed a valid will dated 5.6.73 in favour of the plaintiff? OPP
2- Whether the will dated 5.6.73 stands cancelled vide the will dated 15.1.87 executed by the deceased Prem Singh in favour of the defendants? OPD
3- Whether the plaintiffs are the owners in possession in equal shares in respect of the suit land? OPP
4- Whether the plaintiffs are entitled to the relief of injunction as prayed for? OPP
5- Whether the suit has not been properly valued for the purpose of court fee and jurisdiction? OPD
6- Relief.

Issue No.1 was decided in favour of plaintiffs. Issue No.2 was answered against defendant Nos. 1 to 4 holding that the will dated 15.1.1987

was surrounded by suspicious circumstances and the propounder of the will had failed to discharge the onus that the testator at the time of execution of the will was of a sound disposing mind and the will was the result of his own volition. Under issue No.3 it was found that the plaintiffs were owners of the land in dispute but in so far as the question of possession over the said land was concerned, it was held that the plaintiffs had themselves admitted by moving an application for amendment of the plaint during the pendency of the suit and stating that the possession was forcibly taken by defendant Nos. 1 to 4 in November, 2000. Since the plaintiffs were not found to be in possession of the land in dispute, issue No.4 was partly decided in their favour. Consequently, the suit was partly decreed to the effect that the plaintiffs were owners of the property in dispute on the basis of the will dated 5.6.73. Defendant Nos. 1 to 5 were directed not to alienate the property in dispute.

The trial court judgment and decree gave rise to three appeals filed separately before the District judge which were ultimately heard and disposed of by the Additional District Judge, Ludhiana. One appeal was filed by the plaintiffs, second by Gurdev Kaur defendant No.6 and third by defendants Karnail Singh others. All the three appeals were disposed of by a common judgment by the first appellate court. Finding on issue No.1 was found to be erroneous by observing that the will dated 5.6.73 Ex. P-2 was not proved in accordance with law and in fact, it was no will in the eyes of law. Finding on issue No.2 was not disturbed whereas the findings returned by the trial court on issue Nos. 3 and 4 were set aside and it was held that the plaintiffs were neither owners nor in possession of the suit property and they were not entitled to seek relief of permanent injunction. It was also held that onus to prove the will dated 15.1.1987 (Exhibit P-5) was on the defendants No.1 – 4 but they have failed to do so and the genuineness of the will is doubtful as the same has been forged. It was held that the property in question owned by deceased Prem Singh shall devolve upon his natural heirs i.e. Smt. Gurdev Kaur defendant No.6 and she would be entitled to seek possession of the said land in due process of law from defendant Nos. 1 to 4 as they had been found to be in unauthorized possession of the suit land. The appeals were disposed of accordingly.

I have heard learned counsel for the parties and perused the record. Since both the wills, one allegedly executed by Prem Singh in favour of the plaintiffs i.e. will dated 5.6.1973 and the other dated 15.1.1987 by virtue of which, the defendants claimed to be owners and the earlier will having

been cancelled, were not proved on record in accordance with law, the first appellate court had ordered that the property in dispute would devolve upon the natural heir of deceased Prem Singh i.e. Smt. Gurdev Kaur defendant No.6. No illegality or perversity could be found in the judgment and decree of the lower appellate court. In view of this, defendant Nos. 1 to 4 had been rightly restrained from alienating the suit land. In view of the fact that defendant Nos. 1 to 4 were found in possession of the suit land, it was rightly ordered by the first appellate court that Smt. Gurdev Kaur on whom the property devolve upon being the natural heir of deceased Prem Singh being the owner thereof will seek possession following due process of law. In view of the law laid down by the Apex Court in **Kondiba Dagadu Kadam Versus Savitri Bai Sapan Gujar and others**, **A.I.R. 1999 SC 2213,** the learned counsel for the appellants was called upon to indicate substantial question of law which arises for determination in these Regular Second Appeals. But the learned counsel could not pinpoint any error of law in the judgment and decree passed by the lower appellate court so as to persuade this Court to interfere in these second appeals. There is thus no merit in these appeals and the same are consequently dismissed.

(AJAY KUMAR MITTAL)
JUDGE

August 11, 2006
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